IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO.358 OF 2000
IN
ARBITRATION PETITION NO.38 OF 1998
IN
AWARD NO.162 OF 1997

Union of India,
through The Commander Works Engineer,
26, Assaye Building, Colaba,
Bombay 400 005. Appellant

vs.

Ceasefire Safety Engineers Private
Limited, Post Box. No.3330,
79, Mohamed Ali Road, Mohamedi House,
Bombay 400 002. Respondent

Mr. S. R. Rajguru i/b. Mr. K.B. Rao for the appellant.

Ms.E. Gonsalves for the respondent.

**CORAM : R. M. LODHA &**
**J.P. DEVADHAR,JJ**

**DATED : 2nd September 2004**

**ORAL JUDGMENT (Per R.M. Lodha,J.)**:

Heard.

2. In this appeal the order dated 25th August 1998 is under challenge whereby the learned Single Judge did not entertain the petition filed under Section 30 read with

Section 33 of the Arbitration Act, 1940 challenging the award dated 25th April 1994 in respect claims no. 1, 2(a) and (b), 3, 7 and 8.

3. Before the learned Single Judge in support of the arbitration petition on behalf of the appellant it was contended that the arbitrator exceeded his jurisdiction in granting amounts under claims no. 1, 2(a) and (b), 3, 5, 7 and 8 as they were beyond the terms of the contract. The learned Single Judge was of the opinion that prima facie case so far as claim no.5 was concerned was made out, but as regards claims no.1, 2(a) and (b), 3, 7 and 8, the learned Single Judge found that the arbitrator had not exceeded the terms of the contract in awarding the amount under the said claims and dismissed the petition at threshold to that extent. It is this order which is under challenge before us.

4. Shorn of unnecessary details, the brief facts giving rise to the present appeal may be first noticed by us. The appellant gave a contract for the work of providing fire-fighting equipments to 9 buildings and 6 sites to the respondents for the sum of Rs.21,89,877.65. The contract consisted of (1) Manual Fire Fighting Alarm System and (2) Wet Hydrant Riser System. The items mentioned in Schedule A of the contract were to be supplied by the contractor, whereas items mentioned in

Schedule B were to be supplied by the appellant for wet riser system. The site was handed over on 24th June 1985 and and the work was to be completed on 23rd April 1986. As regards the work of Manual Fire fighting alarm system, the parties had no dispute. However, for carrying out the work of wet hydrant riser system, the appellant was required to supply pipes vertically cast of IS 1527, but the same were not supplied by the appellant because of non-availability and instead horizontally cast pipes of IS:7181 were directed to be used as according to the appellant the horizontal cast pipes would also withstand the same pressure. The contract specifications for supply of vertical cast CI pipes was, however, not amended as provided in the contract. The respondent laid down the CI pipes as provided by the appellant in the trenches at some sites but some of those CI pipes were found leaking and it is the case of the appellant that the said CI pipes could not withstand pressure. The appellant is said to have informed the respondent that the entire pipeline would be required to be removed and re-installed in the presence of the appellant. It is the case of the appellant that the respondent did not rectify the problem and system was not commissioned for want of power supply. At other sites work was not done by the respondent. The appellant then cancelled the contract at the cost of the respondent. The dispute, thus, arose

between the parties and referred to the arbitrator for adjudication. The respondent made its claim under diverse heads. The appellant filed counter claim before the arbitrator. The arbitrator passed the award after hearing the parties on 25th April 1994.

5. As indicated above, aggrieved thereby the present appellant preferred a petition under Section 30 read with Section 33 of the Arbitration Act, 1940 challenging the award passed by the arbitrator in respect of claim nos. 1, 2(a) and (b), 3, 5, 7 and 8.

6. At the outset, we may observe that before the learned Single Judge there was no challenge raised by the present appellant in respect of the rejection of counter claim set up by the arbitrator. The contention of the learned counsel for the appellant now before us that the counter claim raised by the appellant before the arbitrator was wrongly rejected cannot be entertained.

7. Claim no.1 raised by the respondent related to the balance payment not released for the work executed under the contract. Initially the respondent claimed a sum of Rs.7,64,731/-. However that amount was revised to Rs.2,40,862/-. The arbitrator granted the amount of Rs.1,15,292.50. While granting the said amount the

arbitrator held that there was no justification on the part of the appellant in cancelling the contract. The consideration of the matter by the arbitrator in this respect cannot be said to be beyond the reference. Obviously, for consideration of the claim no.1 set up by the respondent, the aspect whether the contract was justifiably cancelled or not had to be gone into. On the one hand, the claimant submitted before the arbitrator that cancellation of the contract by the appellant was not justified, while the appellant sought to show before the arbitrator that the respondent did not carry out the work as specified under the contract and, therefore, the contract was cancelled. By no stretch of imagination the consideration of the matter by the arbitrator can be said to be beyond the reference. The same position remains as regards claims no. 2 (a) and (b). The claims 2(a) and (b) related to payment not allowed for the extra work ordered and executed under the contract. The extra work comprised of removal of pipes found leaking at W.N.C. Mess and refixing new pipes supplied departmentally. Why should the respondent suffer if the pipes supplied by the appellant did not conform to the contract specifications. For removal of leaking pipes and for re-fixing new pipes, the respondent had to do extra work that was ordered by the appellant and, therefore, the respondent was entitled to extra payment. The payment

of Rs.33,075/- was granted by the arbitrator in respect of claim 2(a) and (b) which cannot be faulted. As regards claim no.3 that related to price escalation, the respondent initially claimed Rs.1,09,499/- but it was revised to Rs.1,04,754/-.94. The arbitrator granted an amount of Rs.86,861.66. The arbitrator cannot be said to have awarded the said amount beyond the terms of the contract.

8. The claims no. 7 and 8 relate to interest; past pendentelite and future. The arbitrator awarded past interest at 8% per annum for the period from 24.12.1990 to 04.02.1992, pendentelite interest at the rate of 8% per annum from 05.02.1992 to until publication of the award and the future interest at the rate of 6% per annum from the date of the award (allowing 90 days grace period) to the date of payment or date of decree whichever is earlier. The award of interest cannot be said to be beyond arbitrator's jurisdiction. All in all, in respect of claim nos.1, 2(a) and (b), 3, 7 and 8 awarded by the arbitrator, it cannot be said that the arbitrator misconducted himself or the proceedings or that the award was improperly procured or otherwise invalid.

9. The order of the learned Single Judge dismissing the arbitration petition under Section 30 read with Section

33 of the Arbitration Act, 1940 in respect of claims no.1, 2(a) and (b), 3, 7 and 8 cannot be faulted.

10. Appeal has no merit and is dismissed with costs.

**(R.M. LODHA, J.)**

**(J.P. DEVADHAR,J.)**